IN THE

Supreme Court of the United States.

THE AMERICAN EXPRESS COMPANY
and R. M. COFFIN,
Plaintiffs in Error,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

Statement.

This is a writ of error to the Supreme Court of Iowa.

The case arises under certain laws of Iowa providing for the seizure and destruction of intoxicating liquors "owned or kept for the purpose of being sold."

(See Appendix to this brief.)

Pursuant to these provisions of the Iowa law, an information was filed, March 31st, 1900, before a Justice of the Peace in Tama Township, Iowa, charging the

plaintiffs in error with keeping intoxicating liquors in the County with intent to sell the same in violation of law (Record, p. 22). Thereupon the Justice issued a warrant to a constable, directing a search of the premises described in the information, and a seizure of the packages mentioned therein.

On the second of April the constable returned the warrant, showing that, pursuant thereto, he had searched the premises and seized four packages of liquor in the office of the American Express Company in Tama, and that he held the liquors subject to the further order of the Court (Record, p. 23).

The plaintiffs in error, the American Express Company and Coffin, its local agent at Tama, the persons against whom the proceeding was instituted, were duly summoned to appear before the Justice, and the cause came on for hearing upon the information, the defendants' answer (Record, p. 23) and a stipulation as to facts (Record, p. 25).

The answer set up in substance (Record, p. 24) that the packages were received by the express company on the 29th of March, from consignors at Rock Island, Illinois, for interstate transportation from Rock Island to Tama, Iowa, consigned to several parties, being what are known as C. O. D. shipments; that at the time of the seizure they were in the possession of the express company and its agent as carriers, and had not yet been delivered to the consignees, and that the express company and its agent had no knowledge of the contents of the packages.

By the stipulation as to facts it appeared that the packages were shipped by the consignors in Illinois consigned to consignees in Tama, Iowa, upon their orders given to the traveling agent of the consignors at Tama, Iowa, and by him sent in to the consignors subject to their approval and shipment thereunder; that they were consigned as C. O. D. shipments for delivery to the consignees at the office of the American Express Company in Tama; that the four packages in question did, as a matter of fact, contain in-

toxicating liquors, but neither the Express Company nor any of its agents or employees had any knowledge of their contents until after the seizure, and that at the time of the seizure the liquors were contained in the original packages in which they had been delivered to the Express Company in Illinois, and that they were seized before delivery to the consignees (Record, p. 26).

Thereupon the Justice rendered judgment that the packages were kept by the Express Company and its agent "for the purpose of being sold in violation of law," and judgment was rendered that they be forfeited (Record, p. 27).

From this judgment the plaintiffs in error appealed to the District Court of Tama County, and upon the appeal filed an amendment to their answer, which was probably unnecessary, but the purpose of which was to make more distinctly their claim to immunity under the Interstate Commerce clause of the Constitution (Record, p. 27). The cause was heard in the District Court upon the same record that was before the Justice, with the addition of the amendment to the answer, and resulted in a finding that the liquors were wrongfully seized, and that they be returned to the express company. Thereupon an appeal was taken by the State to the Supreme Court of Iowa, assigning for error that the District Court "erred in holding that "the liquors seized were exempt from seizure under "the Interstate Commerce provision of the Federal "Constitution" (Record, p. 28).

The opinion of the Supreme Court of Iowa, found at page 29 of the Record, led to a reversal of the judgment of the District Court. From this judgment of the Supreme Court the present writ of error was taken.

Assignment of Errors.

The assignments of error in this Court are found at page 33 of the Record. They raise in various forms

the objection that at the time of the seizure the merchandise was in the possession of the express company as a carrier engaged in interstate transportation; that it was in transit upon the journey into the State and had not been delivered to the consignees, and that the act of interstate transportation was still incomplete; that it was not held by the carrier for sale; that no sale of it in the State of Iowa was contemplated and that the liquors were exempt from seizure or interference or control by the State by reason of the Interstate Commerce clause of the Constitution.

First Point.

Decisions of this Court have reduced within very narrow limits the questions raised by the present record.

The following propositions, which are stated in the language of the Court, must be deemed to be firmly established:

1. That "ardent spirits, distilled liquors, ale "and beer are subjects of exchange, barter and "traffic, like any other commodity in which a "right of traffic exists, and are so recognized by "the usages of the commercial world, the laws of "Congress and the decisions of the courts."

Leisy vs. Hardin, 135 U. S., 100–110.

2. That "the transportation of merchandise "from one State into and across another is inter-"state commerce, and is protected from the opera-"tion of State laws from the moment of shipment, "whilst in transit, and up to the ending of the "journey by the delivery of the goods to the con-

" signee at the place to which they were con-
" signed."

Bowman vs. Chicago & Northwestern Ry. Co., 125 U. S., 465
Rhodes vs. Iowa, 170 U. S., 412, 415.

3. That " the power to ship merchandise from " one State into another carries with it, as an inci-
" dent, the right in the receiver of the goods to " sell them in the original packages, any State " regulation to the contrary notwithstanding; " that is to say, that the goods received by Inter-
" state Commerce remain under the shelter of the " Interstate Commerce clause of the Constitution " until by a sale in the original package they have " been commingled with the general mass of prop-
" erty in the State."

Leisy vs. Hardin, 135 U. S., 100.
Vance vs. W. A. Vandercook Co., 170 U. S., 438, 444.

4. That the last preceding " proposition, whilst " generically true, is no longer applicable to intox-
" icating liquors, since Congress, in the exercise " of its lawful authority," by the passage of the Act of August 8, 1890, " has recognized the power " of the several States to control the incidental " right of sale in the original packages of intoxi-
" cating liquors shipped into one State from an-
" other, so as to enable the States to prevent the " exercise by the receiver of the accessory right of " selling intoxicating liquors in original packages " except in conformity to lawful State regula-
" tions."

In re Rahrer, 140 U. S., 545.
Rhodes vs. Iowa, 170 U. S., 412.
Vance vs. W. A. Vandercook, 170 U. S., 438, 445.

5. That the above-mentioned Act of Congress, which provides that intoxicating liquors " trans-
" ported into any State or Territory, or remaining

" therein for use, consumption, sale or storage
" therein, shall, upon arrival in such State or Ter-
" ritory, be subject to the operation and effect of
" the laws of such State or Territory, enacted in
" the exercise of its police powers, to the same
" extent and in the same manner as though such
" * * * liquors had been produced in such
" State or Territory, and shall not be exempt
" therefrom by reason of being introduced
" therein in original packages or otherwise,
" did not intend to, and did not cause
" the power of the State to attach to
" an interstate commerce shipment, whilst the
" merchandise was in transit under such ship-
" ment, and until its arrival at the point of desti-
" nation and delivery there to the consignee."

Rhodes vs. Iowa, 170 U. S., 412, 426.

6. That " the power to ship from one State into
" another embraces of necessity the right to have
" the goods carried to the place of destination,
" and be delivered at that point to the consignee,"
and that the fundamental right which these de-
cisions hold to be protected from the operation
of State laws by the Constitution, is " the continu-
" ity of shipment of goods coming from one State
" into another from the point of transmission to
" the point of consignment, and the accomplish-
" ment there of the delivery covered by the con-
" tract." * * * " The power which it was
" held in the *Bowman case* the State did not pos-
" sess was that of stopping interstate shipments
" at the State line by breaking their continuity
" and intercepting their course from the point of
" origin to the point of consummation."

Rhodes vs. Iowa, 170 U. S., 412-419.

Second Point.

It cannot be denied that the effect of the propositions thus established, is to exempt from State regulation or interference, a shipment of liquors imported into a State, until the contract of shipment or the act of interstate transportation is fully performed and consummated by delivery to the consignee. Such delivery marks the first point of time at which the goods become subjected to State control, as being commingled in the general mass of property within the State, and then only is there a subject upon which the police power of the State can operate.

The seizure of the liquors in the present case took place before that time and while the goods were still in the possession of the interstate carrier engaged in the act of interstate transportation. They were, therefore, clearly exempt from seizure or interference or regulation by the State under the propositions above stated.

Third Point.

The Supreme Court of Iowa held otherwise. Its opinion rests upon no very well defined ground, probably for the reason, as it would appear, that there was much diversity of opinion among the members of the Court touching the real ground upon which the decision should be placed.

As the packages had been shipped C. O. D. the opinion first considers what the nature and effect of such a shipment is.

A majority of the Court were of the opinion that, under such a shipment, the carrier is the agent of the buyer for purposes of transportation, and of the seller for the purpose of retention of possession and collec-

tion of the purchase price, and that, as a necessary corollary, title passes to the buyer on delivery to the carrier. If this be true, then the sale was consummated when the goods were delivered to the carrier in Illinois, and there was no sale contemplated in Iowa, and hence the carrier having the goods in its possession in Iowa for the purpose of delivering to the buyer under the contract of carriage, could not have been keeping the goods for purposes of sale.

The Court, however, declined to follow its own views upon this point, regarding itself as concluded by a former decision of the Supreme Court of Iowa (70 Iowa, 278), in which it was held, in respect to a C. O. D. shipment of liquors, that while in the possession of the carrier they remained the property of the consignors, and that the carrier was the agent of the consignors with authority to transfer title to the property by delivery upon payment of the purchase price. They admitted (Record, p. 31) that the doctrine of this former Iowa case was opposed to the weight of authority, but they justified themselves in following it by saying:

> " Supported as we are in our position by re-
> " spectable authority, fortified by the thought
> " that we are upholding the policy of this State
> " toward the traffic in intoxicants, and fully be-
> " lieving that the doctrine announced, while, per-
> " haps, not supported by the weight of judicial
> " authority, is one which will do much good and
> " no harm, we are constrained to adhere to it on
> " the broad ground of *stare decisis*, which is one
> " of the safeguards of our judicial system "!

In the view of the Court the reaching of this conclusion presented an additional advantage.

> " This conclusion," they said, " relieves us from
> " the necessity of considering the other question,
> " as to whether or not the goods are protected by
> " reason of the Commerce clause of the Federal
> " Constitution "!

and for this statement they relied upon *O'Neill vs. Vermont*, 144 U. S., 323.

This was, at least, a convenient and easy way of avoiding the making of any decision upon the only point in the case that called for decision—that is the Federal question that was presented under the Interstate Commerce clause of the Constitution.

In an earlier part of the opinion the Court had stated what they supposed the *O'Neill case* to have decided—a supposition which, although quite erroneous, may serve to explain what they meant by saying that they were relieved from the necessity of deciding the Federal question.

The statement was to the effect that the Supreme Court of the United States, in the *O'Neill case*, " held " that the determination of the character of a C. O. D. " transaction did not involve a Federal question, and " not only sustained a condemnation of liquors under " precisely the same state of facts as appear in the " case before us now, but also affirmed a judgment of " conviction against an agent connected with the sale."

A more erroneous statement of what was in fact held in the *O'Neill case* can hardly be imagined. The case arose upon a prosecution, under the laws of Vermont, for selling, furnishing and giving away intoxicating liquors.

The defendant was a dealer in liquors at Whitehall, New York, and was in the habit of receiving at his store orders for liquor from Vermont, accompanied by a jug to contain the liquor, and liquors were sent from Whitehall into Vermont by express under a C. O. D. consignment. The Supreme Court of Vermont held that the completed sale was in Vermont and sustained the conviction. A writ of error taken to the Supreme Court of the United States was dismissed. No point on the Commerce Clause of the Constitution was taken in the County Court or considered by the Supreme Court of Vermont. The case was put by the Supreme Court of the State solely upon its police power.

Speaking of this case, Mr. Justice BROWN, delivering

the opinion of the Court in *Norfolk & Western Railway Company vs. Sims*, 191 U. S., 441–449, said:

> "It will thus be seen that the Supreme Court
> " of Vermont disclaimed the decision of the very
> " question involved in this case as to the power of
> " the States to interfere with interstate commerce
> " by taxation of the thing imported, and the writ
> " of error was dismissed upon the ground that no
> " Federal question was presented for its decision
> " and none was necessary to the determination of
> " the case."

Of course it is true, as an isolated proposition, that the determination of the character of a C. O. D. transaction does not, of itself, necessarily present a Federal question; but this Court, in the *O'Neill case*, neither sustained the condemnation of the goods nor the conviction of the defendant. It simply dismissed the case because the defendant had failed to raise any Federal question by claiming the protection of the Interstate Commerce clause. Mr. Justice FIELD, indeed, thought that the Federal question was sufficiently presented, and entertained no doubt that the action of the State courts was in violation of the Interstate Commerce clause.

It will thus be seen that the position of the Supreme Court of Iowa, that having determined that the sale under the C. O. D. shipment was not completed until delivery to the consignee in Iowa, it was thereupon relieved from the necessity of deciding the Federal question, derives no support from the *O'Neill case*. The very ground of the decision in the latter was that the parties had wholly failed to raise the Federal question, a condition bearing no analogy to that presented by the case at bar, in which the one contention insisted upon throughout by the plaintiffs in error was the immunity claimed under the Interstate Commerce clause of the Federal Constitution.

When it is thus shown what the decision in the

O'Neill case really was the position of the Iowa Supreme Court must amount to this: that because the Supreme Court of the United States had held that a decision of a State Court concerning the effect of a C. O. D. shipment did not present a Federal question in a case where no Federal question was raised, therefore, a like decision can present no Federal question in a case in which a Federal question is most distinctly raised.

A position which surely can require no argument for its complete refutation.

Fourth Point.

Whether the Supreme Court of Iowa was correct in holding, in accordance with its former decision in 70 Iowa, 271, that the technical property in the goods remained in the consignors, and that the express company was their agent with authority to transfer the title to the consignee upon payment of the purchase price, is of little importance.

Confessedly, this conclusion was reached in spite of the conviction of a majority of the Court that it was erroneous. Admittedly, they blindly followed a former precedent of their Court which they conceded to be opposed to the weight of authority.

It *was* opposed by the great weight of authority. While the question is one upon which there has been some conflict of authority, by far the better opinion is that, in such a case, the sale is complete upon a delivery of the goods to the carrier, who becomes the agent of the consignee for the purpose of accepting a delivery and transporting the goods to him, and the agent of the consignor for the purpose of the collection of the purchase price.

Commonwealth vs. Russell, 11 Ky., 576.
State vs. Cairns (Kansas), 68 Pac. Rep., 621.

James vs. Commonwealth, 42 S. W. Rep., 1107.
Commonwealth vs. Fleming, 130 Pa. State, 138.
State v. Flanagan, 38 West Va., 53.
Pilgreen vs. State, 71 Ala., 368.
Higgins vs. Murry, 73 N. Y., 252.

But, as we have said, this question of the technical passing of the title, is of little importance. There can be no doubt that, at the time of the seizure, the carrier in the present case was engaged in an act of interstate commerce transportation, and until that was concluded and consummated the goods were not subject to the police power of the State.

That the technical question of the passing of title is immaterial has been very lately held by this Court. In *Norfolk & Western Railway Company vs. Sims*, 191 U. S., 441, a Chicago corporation had consigned a sewing machine to a customer in North Carolina, upon his order, and under an ordinary C. O. D. consignment. The Supreme Court of North Carolina held that this was a sale by the consignors within the State, because, in their opinion, the title did not pass until the delivery to the consignee, and they sustained a levy upon the machine by the sheriff for the purpose of collecting a license tax held to be due from the consignor, as a person engaged "in the business of selling" in the State. The judgment of the Supreme Court of North Carolina was reversed by this Court, which, speaking by Mr. Justice BROWN, said:

> "While it may be entirely true that the prop-
> "erty in the thing sold does not pass under a
> "C. O. D. consignment until delivery of the
> "goods and payment to the carrier, and hence it
> "may be said that the sale is not completed until
> "then, yet as matter of fact the bargain is made
> "and the contract of sale completed as such, when
> "the order is received in Chicago, and the ma-
> "chine shipped in pursuance thereof."

"A sale really consists of two separate and dis-
"tinct elements; first, a contract of sale, which
"is completed when the offer is made and ac-
"cepted; and, second, a delivery of the property
"which may precede, be accompanied by, or fol-
"low the payment of the price, as may have been
"agreed upon between the parties. The sub-
"stance of the sale is the agreement to sell and
"its acceptance. That possession shall be re-
"tained until payment of the price may or may
"not have been a part of the original bargain, but
"in substance it is a mere method of collection."
" * * *

And in conclusion the learned Justice said:

"Upon the other hand, for the past seventy-five
"years and ever since the original case of *Brown*
"*vs. Maryland*, 12 Wheat., 419, we have uni-
"formly held that States have no power to tax
"directly or by license upon the importer, goods
"imported from foreign countries or other States,
"while in their original packages, or before they
"have become commingled with the general prop-
"erty of the State and lost their instinctive char-
"acter as imports." * * *

"Indeed, the cases upon this subject are almost
"too numerous for citation, and the one under
"consideration is clearly controlled by them. The
"sewing machine was made and sold in another
"State, shipped to North Carolina in its original
"package for delivery to the consignee upon pay-
"ment of its price. It had never become co-
"mingled with the general mass of property within
"the State. While technically the title of the
"machine may not have passed until the price
"was paid, the sale was actually made in Chicago,
"and the fact that the price was to be collected
"in North Carolina is too slender a thread upon
"which to hang an exception of the transaction

" from a rule which would otherwise declare the
" tax to be an interference with interstate com-
" merce."

Fifth Point.

We have said that there was much diversity of opinion in the Iowa Supreme Court touching the real ground upon which the decision should be placed.

Having decided against the real conviction of a majority of its members, to follow the former case in which it was held that the carrier was the agent of the consignor only, and that the sale did not take place until delivery to the consignee in Iowa, and having decided that this conclusion relieved the Court from the necessity of passing upon the Federal question, the Court continues:

" However, some of the members of the Court
" would reach the same result, had it been found
" that the title to the property passed when de-
" livered to the carrier in the State of Illinois.
" Conceding that to be true, they are of the opin-
" ion that the transaction was not in any fair
" sense interstate commerce, protected by the
" Constitution of the United States from State
" regulation."

" The express company, in effect, engaged in
" the business of selling through agents in this
" State at retail, intoxicating liquors, shipped by
" it *for that purpose* from the State of Illinois.
" This was a mere device as it seems to us to
" evade the police laws of this Commonwealth, and
" that the doctrine of ' original packages,' or of
" freedom of interstate commerce, does not apply
" to a business of this character. ' In assuming
" to collect the purchase price, and to hold pos-
" session until the price was paid, it was in no
" proper sense engaged in interstate cammerce.'

" Others of the Court are of a contrary opinion; " they think the collection of the purchase price " was a mere incident to the transportation of the " goods, and that the case should be ruled by " Rhodes vs. Iowa, *supra*, in the event we are con- " strained to overrule the express company case " in 70 Iowa " (Record, p. 31).

1. The opinion does not state why some of the members of the Court thought that the transaction was not in any fair sense interstate commerce.

The " transaction " referred to was the transportation by a carrier from one State into another of a particular kind of merchandise which this Court has said is—

" the subject of exchange, barter and traffic, like " any other commodity in which a right of traffic " exists, and is so recognized by the usages of the " commercial world, the laws of Congress and the " decisions of the Courts."

If such a transaction be not intestate commerce, protected by the Federal Constitution from State regulation, then no transaction can come within the definition of those words.

2. The next suggestion in the portion of the opinion last quoted, is that " the express company in effect engaged in the business of selling, through agents in this State, intoxicating liquors shipped by it for that purpose from the State of Illinois," and that " this was a mere device, as it seems to us, to evade the police laws of this Commonwealth."

Surely, in view of the conceded facts, this is an extraordinary construction to put upon the transaction.

The merchandise was not shipped by the express company, but by the consignors (Record, p. 26, see § 7 of Stipulation as to Facts).

It was received by the express company for transportation in the regular course of its business as an intestate carrier, and " neither the company nor its

agents or employees knew or had any knowledge that the packages contained intoxicating liquors (Record, p. 26, see § 4 of Stipulation). In fact, the express company and its agents knew nothing of the contents of the packages until after the seizure *(Ib.)*.

The admitted facts are that the express company acted in entire good faith, accepting and forwarding the shipment in the ordinary course of business, without the slightest knowledge or suspicion that it contained intoxicating liquors. And yet this is characterized by the Supreme Court of Iowa as the engaging by the company in the business of selling intoxicating liquors at retail in the State, and as a device to evade its prohibition laws.

Does not the entire record show that there is not the slightest justification of such a charge?

3. But if this were otherwise, and it had been shown that the carrier had knowledge of the contents of the shipment, it would be quite immaterial.

What is or is not a subject of interstate commerce cannot be determined by the State of Iowa. If this were not true, the State could wholly exclude interstate shipments of liquors.

The police powers of the State can have no operation upon that which is the subject of interstate commerce. The constitutional privilege protects the transaction from any exercise of those powers, so long as it retains its interstate character.

It would not aid the State to denounce it as a *device*, nor would it help her cause in any degree to show that it was in fact a device to evade her police laws. If it be such and is yet protected by the constitutional immunity of interstate commerce, the device is lawful by virtue of a higher power than any the State can exercise.

4. It is next said that the carrier

> " in assuming to collect the purchase price and to
> " hold possession until the price was paid, was in
> " no proper sense engaged in interstate com-
> " merce."

Why not? Are not those acts commercial acts? Are they not a part of commerce? The Court seems to have entertained a notion that nothing but a naked sale, or nothing but naked transportation can constitute commerce. What warrant is there for such a notion? The constitutional immunity extends to whatever goes to make up commerce, whether it be a principal or merely an incidental factor. The entire transaction is privileged with all its incidents and all its details.

In undertaking, in connection with an interstate shipment, to collect the price, the carrier is as truly engaged in interstate commerce as he is in performing the act of transportation itself.

5. Some of the Court were of opinion that the collection of the purchase price was a mere incident to the transportation of the goods, and that therefore the case should be governed by *Rhodes vs. Iowa*, in the event that they should feel constrained to overrule the case in 70 Iowa.

If the collection of the price was a mere incident of the transportation, then they were bound to follow *Rhodes vs. Iowa*, irrespective of what was decided in 70 Iowa. That case did not hold that the collection of the price was not an incident to the transportation, but that the sale was not completed until delivery to the consignee.

As we have above shown, it is quite immaterial whether the title technically passed on delivery to the carrier or on delivery to the consignee. In either case if, as these Judges held, the collection was merely incidental to the transportation, the transaction was interstate commerce and exempt from State control.

Last Point. The judgment of the Supreme Court of Iowa should be reversed with costs.

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APPENDIX.

CODE SEC. 2413. SEARCH WARRANT—SEIZURE. If any credible resident of any county shall, before a justice of the peace for the same county, make written information, supported by his oath or affirmation that he has reason to believe, and does believe, that any intoxicating liquor, described as particularly as may be in said information, owned or kept by any person named or described in said information as particularly as may be, and is intended by him to be sold in violation of the provisions of this chapter, said justice shall, upon finding probable cause for such information, issue his warrant of search, directed to any peace officer in the county, describing as particularly as may be the liquor and the place described in said information as the owner or keeper of said liquor, and commanding the said officer to search thoroughly said place, and to seize the said liquor with the vessels containing it, and to keep the same securely until final action be had thereon; whereupon the said peace officer to whom such warrant shall be delivered shall forthwith obey and execute, as effectually as possible, the commands of said warrant, and make return of his doings to said justice, and shall securely keep all liquors so seized by him and the vessels containing them until final action be had thereon. If the place to be searched be a dwelling house in which any family resides, and in which no tavern, eating house, grocery or other place of public resort is kept, such warrant shall not be issued unless said complaint shall, on oath or affirmation, declare before said justice that he has reason to believe and does believe that within one month next before making of said information intoxicating liquor has been in violation of this chapter, sold in said house, or in some dependency thereof, by the person accused in said information, or

by his consent or permission ; nor unless from the facts and circumstances disclosed by such complaint, the said justice shall be of the opinion that said complaint has adequate reason for such belief.

CODE SEC. 2414. INFORMATION FOR SEARCH WARRANT—DEFECTS. The information and search warrant in such case shall describe, with reasonable particularity, the place to be searched, as well as the liquors to be seized. When any liquors shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same by reason of any alleged insufficiency of description in the warrant of the liquor or place, but the claimant shall only have a right to be heard on the merits of the case.

CODE SEC. 2415. NOTICE—TRIAL—JUDGMENT—APPEAL. In the event of a seizure under said warrant, the officer shall forthwith make a return of his acts thereunder, and within forty-eight hours thereafter the justice who issued the warrant shall cause to be left at the place where said liquor was seized, if said place be a dwelling house, store or shop, posted in some conspicuous place on or about said buildings, and also to be left with or at the last known and usual place of residence of the person named or described in said information as the owner or keeper of said liquor, if he be a resident of this state, a notice, summoning such person, and all others whom it may concern, to appear before said justice at a place and time named in said notice, which time shall not be less than five nor more than fifteen days after the posting and leaving of said notices, and show cause, if any they have, why said liquor, together with the vessels in which the same is contained, should not be forfeited ; and said notice shall, with reasonable certainty, describe said liquor and vessels, and shall state where, when and why the same were seized. At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said liquor and vessels, or any part thereof, may ap-

pear and show cause why the same should not be forfeited. If any person shall so appear, he shall become a party defendant in said cause, and said justice shall make a record thereof. Whether any person shall so appear or not, said justice shall, at the prescribed time, proceed to the trial of said case, and said complainants or either of them may, and upon their default the officer having such liquor in custody shall, appear before said justice and prosecute said information, and show cause why such liquor should be adjudged forfeited.

The proceeding in the trial of such case may be the same, substantially, as in cases of misdemeanor triable before justices of the peace, and if any person shall appear and be made a party defendant as herein provided, and shall make written plea that said liquor or a part thereof claimed by him, was not owned or kept with intent to be sold in violation of this chapter, such party defendant may, at his option, demand a jury to try the issue, and if, upon the evidence presented, the said justice or jury, as the case may be, shall by verdict, find that said liquor was, when seized owned or kept by any person, whether said party defendant or not, for the purpose of being sold in violation of this chapter, the said justice shall render judgment that said liquor, or said part thereof, with the vessels in which it is contained, is forfeited. If no person be made defendant in manner aforesaid, or if judgment be in favor of all the defendants who appear and are made such, then the costs of the proceeding shall be paid as in ordinary criminal prosecutions where the prosecution fails. If the judgment shall be against only one party defendant appearing as aforesaid, he shall be adjudged to pay all the costs of proceedings in the seizure and detention of the liquor claimed by him, and trial, up to the time of judgment. But if such judgment shall be against more than one party defendant claiming distinct interests in said liquor, then the costs of said proceedings and trial shall be, according to the discretion of said justice, equitably apportioned among said defendants, and execution shall be issued on said judgments

against said defendants, for the amount of the costs so adjudged against them. Any person appearing and becoming party defendant as aforesaid may appeal from said judgment of forfeiture, as to the whole or any part of said liquor and vessels claimed by him and so adjudged forfeited, to the district court, as in ordinary cases of misdemeanor.

CODE SEC. 2416. DESTRUCTION OF LIQUOR AND VESSELS. Whenever it shall be finally decided that liquor seized as aforesaid is forfeited, the Court rendering final judgment of forfeiture shall issue to the officer having said liquors in custody, or to some other peace officer, a written order, directing him forthwith to destroy said liquor and vessels containing the same, and immediately thereafter to make return of said order to the court whence issued, with his doings indorsed thereon. Whenever it shall be finally decided that any liquor so seized is not liable to forfeiture, the court by whom such final decision shall be rendered shall issue a written order to the officer having the same in custody, or to some other peace officer, to restore said liquors with the vessels containing the same, to the place where it was seized, as nearly as may be, or to the person entitled to receive it, which order the officer shall obey, and make return thereon to the court of his acts thereunder, and the costs of the proceeding in such case attending the restoration, as also the costs attending the destruction of such liquor in case of forfeiture, shall be taxed and paid in the same manner as is provided in case of ordinary criminal prosecutions where the prosecution fails.